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PROG 09-28-84
CHG:JABUSHNELL
POL:JJCARRAGHER:JMR
POL:RBHOWARD, POL:JJDEVINE, POL:JAALLITTO, DAO:CBARNUM
POL-3 AMB DCM, DAO ECON SCI, USIS MILGP RF, CHRON

AMEMBASSY BUENOS AIRES
SECSTATE WASHDC, IMMEDIATE
INFO AMEMBASSY ASUNCION
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USMISSION USUN NEW YORK
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USAFSO HOWARD AFB PN//LAI//
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ARGENTINA PROJECT (S200000044)

U.S. DEPT. OF STATE, A/RPS/IPS

Margaret P. Grafeld, Director

(☒) Release (☐) Excise (☐) Deny

Exemption(s):

Declassify: (☐) In Part (☒) In Full

(☐) Classify as ☐ (☐) Extend as ☐ (☐) Downgrade to ☐

Date ☐ Declassify on ☐ Reason ☐

CINCSO FOR INTAFF, CINCLANT ALSO FOR POLAD

ROME ALSO FOR EMBASSY VATICAN

E.O. 12356: DECL:OADR

TAGS: SHUM, PGOV, MARR, AR

SUBJ: (C) ARMED FORCES SUPREME COUNCIL WILL NOT REACH

- VERDICT IN JUNTA TRIALS

REFS: (A) BUENOS AIRES 7614 (212036Z SEP 84) (NOTAL),

- (B) BUENOS AIRES 7513 (191326Z SEP 84) (NOTAL),

- (C) BUENOS AIRES 5948 (301518Z JUL 84) (NOTAL)


1.  - ENTIRE TEXT.)

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2. SUMMARY: THE SUPREME COUNCIL OF THE ARMED FORCES INFORMED THE CIVIL JUDICIARY THAT IT CANNOT REACH A VERDICT IN THE TRIALS OF MILITARY JUNTA MEMBERS BEFORE THE OCTOBER 12 DEADLINE. THE COUNCIL DID NOT REQUEST MORE TIME TO CONSIDER THE CASES AND, IN AN UNEXPECTED STATEMENT, DECLARED LEGALLY PROPER THE ORDERS ISSUED TO IMPLEMENT THE JUNTAS' ANTITERRORIST CAMPAIGN. THE COUNCIL'S POSITION IS A POLITICAL CHALLENGE TO THE GOVERNMENT. THE CIVIL JUDICIARY MAY PROLONG THE SUPREME COUNCIL'S MANDATE. HOWEVER, IF IT DECIDES INSTEAD TO TAKE JURISDICTION OVER THE CASES, THE GOVERNMENT'S STRATEGY TO HAVE THE MILITARY JUDGE ITS OWN WILL HAVE FAILED, ADDINGH* ANOTHER CONTENTIOUS ISSUE TO GOVERNMENT-ARMED FORCES RELATIONS. END SUMMARY.



3. THE SUPREME COUNCIL OF THE ARMED FORCES INFORMED THE CIVILIAN NATIONAL APPELLATE COURT SEPTEMBER 25 THAT IT WILL NOT BE ABLE TO REACH A VERDICT IN THE HUMAN RIGHTS VIOLATION TRIALS OF MILITARY JUNTA MEMBERS BEFORE THE OCTOBER 12 DEADLINE PREVIOUSLY GRANTED BY THE APPELLATE COURT. THE COUNCIL'S STATEMENT WAS EXPECTED (REF B), AS WAS ITS DECISION NOT TO REQUEST A LONGER MANDATE. TO GENERAL SURPRISE, HOWEVER, THE COUNCIL IN ITS STATEMENT APPARENTLY JUSTIFIED WORDING OF THE ORDERS FOR THE PROCESS GOVERNMENTS' WAR ON SUBVERSION. ITS FIVE-PAGE NOTE TO THE APPELLATE COURT STATES "THAT ON THE BASIS OF THE STUDIES UNDERTAKEN TO DATE, THE DECREES, INSTRUCTIONS, (AND) ORDERS THROUGH WHICH THE MILITARY ANTI-TERRORIST ACTION WAS IMPLEMENTED, ARE UNQUESTIONABLE FROM THE VIEWPOINT OF FORM AND SUBSTANCE." THE COUNCIL'S LEGAL ARGUMENT CONCLUDES THAT JUNTA MEMBERS CAN THEREFORE "ONLY BE INDIRECTLY CHARGED WITH FAILING TO ESTABLISH APPROPRIATE, OPPORTUNE, AND EFFICIENT CONTROL MEASURES TO PREVENT, FRUSTRATE, OR CONDEMN THE CRIMES THAT MAY HAVE BEEN COMMITTED." THE COUNCIL STATEMENT ALSO IMPLICITLY IMPUGNS THOSE LEVELING CHARGES AGAINST THE MILITARY, SAYING THAT "THE IMPARTIALITY AND CREDIBILITY OF SUCH CHARGES ARE OF RELATIVE VALUE" AND THAT "COINCIDENCES IN STYLE AND CONTENT HAVE AROUSED SUSPICION."


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4. COMING ON THE HEELS OF THE SABATO COMMISSION'S EXPLICIT RECOUNTING OF TORTURES AND DISAPPEARANCES, THE SUPREME COUNCIL'S DECLARATION WAS WIDELY CONDEMNED. A CHRISTIAN DEMOCRAT OPINED THAT "IT WAS WRONG TO BELIEVE THAT EXECUTIONERS WOULD JUDGE EXECUTIONERS." EVEN MEMBERS OF PRESIDENT ALFONSIN'S PARTY WERE ANGERED-- DEPUTY JORGE VANOSSI, CHAIRMAN OF THE CONSTITUTIONAL AFFAIRS COMMITTEE OF THE CHAMBER OF DEPUTIES REPORTEDLY SAID, "THE CASES...WILL BE HANDED OVER TO THE CIVILIAN COURTS." CONGRESSIONAL MOVES TO ESTABLISH A LEGISLATIVE COMMISSION TO INVESTIGATE ABUSES ARE LIKELY.

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5. OFFICIALLY, THE GOVERNMENT REPLIED CALMLY. INTERIOR MINISTER ANTONIO TROCCOLI DENIED THAT THE COUNCIL'S REPORT MADE "ANY SORT OF PREJUDGMENT," SAYING INSTEAD THAT THE COUNCIL "REPORTED ON THE STATE OF THE LEGAL CASES...TO LET THE FEDERAL COURT MAKE A FINAL DECISION." A MINISTRY OF DEFENSE COMMUNIQUE DECLINED TO MAKE "VALUE JUDGMENTS" ON THE REPORT AND STATED THAT THE "CASE MUST BE RESOLVED WITHIN THE JUDICIAL FIELD....IT IS THE APPELLATE COURT AND NOT THE EXECUTIVE BRANCH THAT MUST DETERMINE IF THE ACTIONS OF THE COUNCIL REASONABLY COMPLY WITH PROCEDURAL METHODS."



6. COMMENT: THE LEGAL ARGUMENTS OF THE SUPREME COUNCIL'S REPORT SEND A DELIBERATE AND MAJOR POLITICAL CHALLENGE AT THE ALFONSIN GOVERNMENT. AS ONE OF HIS FIRST ACTIONS ON RETURN FROM THE UNITED STATES, THE PRESIDENT MET WITH MINISTER OF DEFENSE RAUL BORRAS AND TROCCOLI TO DISCUSS HIS NEXT MOVES. A RADICAL SENATOR CONCEDED TO EMBASSY OFFICIALS THAT THE COUNCIL'S POSITION SERIOUSLY COMPLICATES ALFONSIN'S EFFORTS TO HAVE MILITARY COURTS JUDGE THOSE RESPONSIBLE FOR HUMAN RIGHTS ABUSES UNDER THE MILITARY GOVERNMENT.

7. SOME OBSERVERS HERE CLAIM THAT THE MILITARY JUDGES DO NOT WANT TO PRONOUNCE SENTENCE ON THEIR BRETHREN. CIVIL PROSECUTION WOULD ALMOST CERTAINLY ASSURE NUMEROUS AND LENGTHY TRIALS. THE EXECUTIVE RIGHTLY ARGUES THAT THE TRIALS ARE A JUDICIAL MATTER, BUT IF CIVIL COURTS TAKE OVER JURISDICTION THOSE IN THE ARMED FORCES ALREADY SUSPICIOUS OF THE ALFONSIN GOVERNMENT ARE LIKELY TO IGNORE THE POINT THAT THE MILITARY ITSELF PRECIPITATED THE ACTION. INSTEAD, CIVIL JURISDICTION WILL BE READ IN THOSE QUARTERS*AS FURTHER EVIDENCE THAT THE RADICALS WANT TO DESTROY THE MILITARY. ARMED FORCES' PRESSURE FOR AN AMNESTY WOULD ALSO INCREASE, ACCORDING TO RADICAL SOURCES.



8. THE PROVOCATIVE STATEMENTS OF THE SUPREME COUNCIL'S REPORT ASIDE, IT IS INDISPUTABLE THAT THE COUNCIL IS INNUNDATED WITH WORK (210 TRIALS UNDERWAY AND 436 MORE CASES UNDER STUDY, IN ADDITION TO THE CASES OF THE NINE JUNTA MEMBERS) AND UNDERSTAFFED (REF B). THIS FACT WOULD GIVE THE CIVIL COURT SUFFICIENT GROUNDS TO PLACE RESPONSIBILITY BACK ON THE MILITARY JUDGES BY GRANTING THE SUPREME COUNCIL ADDITIONAL TIME AND RESOURCES TO REACH VERDICTS. WHILE VANOSSI'S COMMENTS INDICATE THE PATIENCE OF SOME RADICALS IS WEARING THIN AND OPPOSITION PARTIES ARE LIKELY TO PRESS FOR A CONGRESSIONAL INVESTIGATION, RETURNING THE CASES TO THE MILITARY COURTS APPEARS TO BE THE GOVERNMENT'S BEST SHORT-TERM OPTION FOR THWARTING THE SUPREME COUNCIL'S MANEUVER. HOWEVER, ONLY THE APPELLATE COURT--NOT ALFONSIN--HAS THE AUTHORITY TO TAKE THAT ACTION AND AT LEAST ONE PRESS REPORT TODAY CLAIMS THE APPELLATE COURT DOES NOT CONTEMPLATE GRANTING THE SUPREME COUNCIL MORE TIME. WHATEVER THE NEXT STEPS MAY BE, THE SABATO AND SUPREME COUNCIL REPORTS HAVE DRAMATICALLY REOPENED THE DEEP DIVISIONS OVER THE HUMAN RIGHTS ISSUE IN ARGENTINA AND ADDED NEW TENSION TO THE ALFONSIN GOVERNMENT'S DELICATE RELATIONS WITH ITS ARMED FORCES. END COMMENT. BUSHNELL##

